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July 20, 2015

VIA FACSIMILE

The Honorable Colleen McMahon  
United States Courthouse  
Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

Re: *A.F. of L. - A.G.C. Building Trades Welfare Plan v. Actavis, plc,*  
No. 15-cv-4406 (CM) (S.D.N.Y.)

Dear Judge McMahon:

**MEMO ENDORSED**

This firm represents Defendants Actavis plc (n/k/a Allergan plc), Forest Laboratories, LLC, and Cobalt Laboratories, Inc., in the above-captioned matter, and we write on behalf of the parties<sup>1</sup> in response to the Court's June 19, 2015 Order Scheduling an Initial Pretrial Conference. (Doc. No. 8)

The Parties are in the process of discussing initial scheduling in this matter and the possibility of discrete pre-motion to dismiss discovery limited to patent litigation settlement agreements referenced in the Complaint, and any related agreements. The parties will write to update the Court on any agreements reached by Monday, August 3, 2015. The parties therefore respectfully request that the Court postpone the requirement of a Civil Case Management Plan at this time.

The parties also wish to update the Court on two aspects of the litigation that, the Parties respectfully suggest, warrant postponing the September 11, 2015 status conference scheduled in this matter. First, Plaintiff's counsel has indicated that, in the event the Parties are able to reach agreement on a schedule providing for limited, initial discovery, Plaintiff plans to file an amended complaint, after which the parties would agree on a briefing schedule for Defendants' motions to dismiss the amended complaint.

Second, as Your Honor may be aware, in addition to the above-captioned matter brought by a proposed class of indirect purchaser plaintiffs, a separate complaint with similar allegations

<sup>1</sup> We understand Defendant Merz Pharma GmbH & Co. KGaA has not yet been served with Plaintiffs' Complaint.

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against the same defendants was filed by direct purchaser plaintiffs on May 29, 2015. *Burlington Drug Co. v. Actavis, plc*, No. 15-cv-4152 (S.D.N.Y. May 29, 2015). Plaintiff Burlington Drug Co. voluntarily dismissed its complaint on June 12, 2015, but direct purchaser counsel contacted this firm to state that they intended to refile a complaint on behalf of direct purchasers soon. If direct purchaser counsel files a complaint with a different named plaintiff, we are not aware of whether they will do so in a manner that successfully relates back to the May 29, 2015 complaint on behalf of a different plaintiff. But ultimately we expect that such direct purchaser action would be coordinated with this indirect purchaser litigation. Accordingly, the parties respectfully request that the Court postpone the Initial Pretrial Conference currently scheduled for September 11, 2015 until after the parties have submitted a proposed schedule for initial proceedings in this matter and after an anticipated parallel direct purchaser action is filed.

We appreciate the Court's consideration and are available at Your Honor's convenience to discuss.

Respectfully submitted,



Jack E. Pace III

cc: Counsel of Record